

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI**

MISSOURI STATE CONFERENCE OF)	
THE NATIONAL ASSOCIATION FOR)	
THE ADVANCEMENT OF COLORED)	
PEOPLE, REDDITT HUDSON,)	
F. WILLIS JOHNSON and)	
DORIS BAILEY,)	
)	Civ. No. 4:14-cv-02077-RWS
Plaintiffs,)	
)	
v.)	
)	
FERGUSON-FLORISSANT SCHOOL)	
DISTRICT and ST. LOUIS COUNTY)	
BOARD OF ELECTIONS)	
COMMISSIONERS,)	
Defendants.)	

**PLAINTIFFS' RESPONSE TO DEFENDANT FERGUSON-FLORISSANT SCHOOL
DISTRICT'S MOTION TO REOPEN CASE FOR ADDITIONAL EVIDENCE**

On April 8, 2016, the parties filed their post-trial briefs. The District requested that the Court take judicial notice of the April 5, 2016 election returns. ECF No. 174, *Def.'s Post-Trial Br.*, at 14. Plaintiffs did not oppose the District's request for judicial notice of the 2016 FFSD school board election results. *See* ECF No. 182, *Pls.' Resp. to Def.'s Post-Trial Br.*, at 8-9.

On April 22, 2016, the District filed a "Motion to Re-Open Case for Additional Evidence" seeking to "reopen the case to admit the certified election results for the 2016 District Board of Education contest." ECF No. 181, *Mem. in Supp. of Mot. to Re-Open Case*, at 3. The District specifies that its motion is "in addition to the District's request for judicial notice" of the 2016 school board election results. ECF No. 180, *Mot. to Re-Open Case*, ¶ 8.

Plaintiffs do not oppose admission of the certified 2016 FFSD school board election results. If, however, the Court determines it is appropriate to take judicial notice that an "African American female" was elected to the Board in the 2016 election, as the District requested in its

Post-Trial Brief, ECF No. 174 at 14, then for the sake of completeness, Plaintiffs request that the Court also take notice that: (1) the 2016 election included another African-American candidate who lost; (2) a white incumbent chose not to run for re-election; and (3) the only incumbent who did run, Leslie Hogshead, who is white, won. *See* ECF No. 182, *Pls. ' Resp. to Def. 's Post-Trial Br.*, at 8-9.

Because the District's motion seeks to re-open evidence to admit only certified election results, the motion is moot because the parties agree that the Court may take judicial notice of those results. *See* ECF No. 182, *Pls. ' Resp. to Def. 's Post-Trial Br.*, at 8-9. Nevertheless, because the motion seeks only the admission of evidence to which Plaintiffs have already stipulated, Plaintiffs do not oppose the motion.

Ultimately, the election of a Black candidate has no bearing on the *Gingles* preconditions. The election results do not provide probative information about voting patterns, polarization among Black and white voters, or overall success of Black-preferred candidates in the District.

Dated this 26th day of April, 2016.

Respectfully submitted,

/s/ Julie A. Ebenstein

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** appearing pursuant to Local Rule 12.01(F)*

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CERTIFICATE OF SERVICE

I, Julie A. Ebenstein, hereby certify that on April 26, 2016, I filed the foregoing document using the e-filing system, thereby serving electronic copies via email to all named parties below:

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